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a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.

## **PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

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AUTHORITY: 42 U.S.C. 3535(d) and 6103.

SOURCE: 51 FR 45266, Dec. 17, 1986, unless otherwise noted.

### **Subpart A—General**

#### **§ 146.1 Purpose of the Age Discrimination Act of 1975.**

The Age Discrimination Act of 1975 (the Act) prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act, however, permits federally assisted programs and activities and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and this part.

#### **§ 146.3 Purpose of HUD's age discrimination regulation.**

The purpose of this part is to state HUD's policies and procedures under the Age Discrimination Act of 1975, consistent with the government-wide age discrimination regulation contained at 45 CFR part 90.

#### **§ 146.5 Applicability of part.**

This part applies to each program or activity that receives Federal financial assistance provided by HUD.

#### **§ 146.7 Definitions.**

The terms *HUD* and *Secretary* are defined in 24 CFR part 5.

*Act* means the Age Discrimination Act of 1975, 42 U.S.C. 6101–07.

*Action* means any act, activity, policy, rule, standard, or method of administration or the use of any policy, rule, standard, or method of administration.

*Age* means how old a person is, or the number of elapsed years from the date of a person's birth.

*Age distinction* means any action using age or an age-related term.

*Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, *children*, *adult*, *older persons*, but not *student*).

*Federal financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which HUD provides or otherwise makes available assistance in the form of:

- (a) Funds;
- (b) Service of Federal personnel; or
- (c) Real or personal property or any interest in or use of property, including:

(1) Transfers or leases of property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

*Recipient* means any State or its political subdivisions; any instrumentality of a State or its political subdivisions; any public or private agency; any Indian tribe or Alaskan Native Village, institution, organization, or other entity; or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but does not include the ultimate beneficiary of the assistance.

*Subrecipient* means any of the entities in the definition of *recipient* to which a recipient extends or passes on Federal financial assistance. A subrecipient is regarded as a recipient of Federal financial assistance and has all the duties of a recipient set out in this part.

*United States* means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, the Trust Territory of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

[51 FR 45266, Dec. 17, 1986, as amended at 61 FR 5206, Feb. 9, 1996]

## Subpart B—Standards for Determining Age Discrimination

### § 146.11 Scope of subpart.

This subpart contains the standards that HUD will use to determine whether an age distinction, or a factor other than age that may have a disproportionate effect on persons of different ages, is prohibited.

### § 146.13 Rules against age discrimination.

(a) The rules stated in this paragraph are limited by the exceptions contained in paragraphs (b) and (c) of this section.

(1) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(2) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contracting, licensing, or other arrangements, use age distinctions or take any other actions that have the effect, on the basis of age, of:

(i) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(ii) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(3) The specific forms of age discrimination listed in paragraph (a)(2) of this section do not necessarily constitute a complete list.

(b) *Exceptions for normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by paragraph (a) of this section if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if: